IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/01/2003

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

C.R.P. (PD) No. 1225 of 2002
and
C.M.P. No. 10335 of 2002

1. Mohd. Yucub
2. Mohd. Sultan Abdul Cader ... Petitioners

-Vs-

1. N. Mohanraj
2. N. Muralidharan
3. N. Ravichandran

4. The District Registrar ... Respondents
Mayiladuthurai

Revision under Section 115 of CPC against the order dated 12-11-2001 made in I.A. No. 152 of 2001 in O.S. No. 94 of 1997 on the file of Additional Sub-Judge, Mayiladuthurai.

!For Petitioners : Mr. R. Venugopalan

^For Respondents ; Mr. S. Sounther for RR1 to 3
Mr. M.C. Swamy, Special Government
Pleader for R4

:ORDER

The defendants 1 and 2 in O.S. NO. 94 of 1997 are the revision petitioners herein. The respondents 1 to 3 herein have filed a statutory suit in O.S. No. 94 of 1997 before the Sub-court, Mayiladuthurai under Section 77 of the Registration Act to set aside the order passed by the 4th respondent herein and for other reliefs. The petitioners herein have filed I.A. No. 152 of 2001 to dismiss the suit in limini as not maintainable in law, which was dismissed by the trial court. Aggrieved by the said order, the present revision has been filed.

2. The short facts involved in this case is the respondents 1 to

3 have purchased the suit property under a sale deed dated 16-04-1999 for a consideration of Rs.14 lakhs. The sale deed was presented for registration on the same day namely 16-04-1999. The respondents 1 to 3 have also paid the deficit stamp duty of Rs.78,000/- in addition to Rs.90,000/- which was already paid by way of stamp papers in which the sale deed was typed. The respondents 1 to 3 have also paid Rs.14,0 00/- towards registration charges. The petitioners have also signed relevant documents for registration. Under Section 230-A of the Income Tax Act, which was in force during the relevant period, the Vendor shall produce income tax clearance certificate if the value of the property sold exceeds Rs.5 lakhs. Corresponding provision was made in the Rules framed under the Registration Act in Rule 162 whereunder the Registrar is empowered to refuse registration when the income tax clearance certificate is not produced.

3. It is alleged by the respondents 1 to 3 that the petitioners have promised to produce income tax clearance certificate within a fortnight, but failed to do so. Thereafter, the 4th respondent has finally granted 15 days time on 09-07-1999 to produce the income tax clearance certificate, in default the sale deed presented was liable to be returned as refused registration. The respondents 1 to 3 have also filed W.P. No. 12561 of 1999 before this Court on 23-07-1999 challenging the order passed by the 4th respondent. This court dismissed the writ petition, however extended the time by two months for production of income tax clearance certificate. It is further alleged by the respondents 1 to 3 that they have filed an application for extension of time before this Court and notice was also issued to the 4th respondent. According to the respondents 1 to 3, the said application is still pending. In the meanwhile, the 4th respondent has passed an order refusing registration of the sale deed on 27-12-1999. Thereafter, the first respondent has filed a statutory suit invoking Section 77 of the Registration Act before the Additional Sub-Judge, Mayiladuthurai. In that suit, the petitioner herein has filed an application in I.A. No. 152 of 2001 praying the Court to dismiss the suit in limini as not maintainable in law, which was dismissed by the trial court.

4. The learned counsel appearing for the petitioners canvassed that the relief sought in the suit was for a mandatory injunction directing the 4th respondent to register the sale deed, which is contrary to the provisions of the Registration Act; that the writ petition No. 12 561 of 1999 filed by the first respondent herein was dismissed by this Court as such the suit praying for identical relief is barred by the principles of res judicata; that when the sub-registrar refuses to register the document, an appeal provided under Sections 72 to 76 of the Registration Act, which was not exhausted by the respondents 1 to 3 herein; that the amendment to Section 230-A of the Income Tax Act was made subsequent to the order passed by the 4th respondent herein, which cannot be made use by the respondents 1 to 3 as the same is passed with prospective effect.

5. The learned counsel appearing for the petitioners relied on a decision (Dhulabhai etc., Vs. State of Madhya Pradesh and another) reported

in AIR 1969 Supreme Court 78 wherein the Honourable Supreme Court held that a suit filed to declare the provisions of law relating to assessment was ultra-vires and for refund of tax illegally collected is barred. The learned counsel also relied on a decision of this Court (R. Selvaraj Vs. State of Tamil Nadu, rep. by its Secretary, Department of Commercial Taxes, Government of Tamil Nadu, Madras – 99 and another) reported in 1999 (III) CTC 581 wherein a learned Single Judge of this Court held that a decision in writ petition can operate as res judicata. The learned counsel also relied on an unreported judgment of this Court made in CRP No. 590 of 2001 dated 13-10-2001 wherein a learned Single Judge of this Court held that when there is a special provision under the Companies Act to prefer an appeal to the Company Law Board, the Civil Court has no jurisdiction.

6. The learned counsel appearing for the respondents 1 to 3 submitted that as per the provisions of the Act which was in force during the relevant period, the petitioners are bound to submit income tax clearance certificate but they failed to do so; that the petitioners have received the entire sale consideration and signed the sale deed as well as other necessary records and presented the same before the 4th respondent for registration; that the 4th respondent refused to receive the document on the only ground that the petitioners have not produced the income tax clearance certificate; that the respondents 1 to 3 have filed an appeal under Section 72 of the Act before the 4th respondent, as he was designated as the District Registrar, which was returned, hence the suit is filed by them as contemplated under Section 77 of the Act; that the provisions of Section 230-A was later amended; that the order passed by this Court in the writ petition is not on merits as such it will not operate as res judicata and prayed for dismissal of the revision.

7. It is not disputed by the petitioners that the appeal preferred by the respondents 1 to 3 has been returned by the 4th respondent. As per the provisions of Section 77 of the Act, where the Registrar refuses to order the document to be registered, any person claiming under such document, may, within thirty days after making of the order of refusal, institute in the civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the documents to be registered in such office if it be duly presented for registration within thirty days after passing of such decree.

8. When the statute itself provides a remedy to approach the civil court, it cannot be said that the trial court has no jurisdiction to entertain the suit.

9. The other point canvassed by the counsel for the petitioners is that in view of the order of dismissal passed by this Court in the writ petition, the suit is barred by res judicata. The principles of res judicata as contamplated under Section 11 of CPC is based on the need for giving finality to judicial decision. The said doctrine is that none should be vexed twice on the same subject matter and no court shall try any suit or issue in

which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. The best method to decide the question of res judicata is to determine the case of the parties as put forward in their respective pleadings of the previous suit, and then to find out as to what had been decided by the former judgment, which is to operate as res judicata.

10. Section 77 of the Act imposes implied obligation or contract on the part of the executant of a document to register such document and the aggrieved party is entitled to bring a suit to enforce specific performance of such implied contract, in other words to compel the registration of such document. The first respondent herein has filed W.P. No. 12561 of 1999 praying for a writ of prohibition, prohibiting the 4th respondent from rejecting the document. The said writ petition was dismissed by this Court, however this court has not decided either the right of the respondents 1 to 3 or the obligation imposed on the petitioners. Once the issue involved in the case is heard and finally decided, such decision operate as res judicata. Whereas, in this case, no such decision was rendered by this Court in the writ petition relating to the right or obligation of the parties. Hence, the plea of res judicata is also rejected.

With the result, the impugned order passed by the court below is confirmed. The revision is dismissed. No costs. Considering the circumstance of the case, I direct the trial court to decide the suit on its merits uninfluenced by the order passed in this revision or the impugned order passed by it. Consequently, connected CMP is closed.

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Internet : Yes